

June 5, 2008

DOCUMENTARY STAMP TAX – DEFINITION OF “NOMINAL CONSIDERATION”

Purpose. To advise Registers of Deeds regarding what constitutes nominal consideration when a deed is presented for recording, and to provide guidance and uniformity to those persons or entities filing deeds in more than one county.

When a deed is presented for recording and the consideration stated on the Real Estate Transfer Statement, (Form 521), is less than 20 percent (20%) of the assessed value, as shown in the records of the County Assessor’s office, the Register of Deeds shall collect documentary stamp tax on the assessed value of the subject property.

Procedure and Implementation. When a deed is presented to the Register of Deeds for recording, the Register of Deeds is required to collect documentary stamp tax upon the privilege of transferring beneficial interest in or legal title to real estate at the rate of two dollars and twenty-five cents (\$2.25) for each thousand dollars of value (\$1,000.00) transferred.

The documentary stamp tax is a tax on the grantor. *See*, Neb. Rev. Stat. Section 76-901, as follows:

There is hereby imposed a tax on the grantor executing the deed as defined in section 76-203 upon the transfer of a beneficial interest in or legal title to real estate at the rate of two dollars and twenty-five cents for each one thousand dollars value or fraction thereof. For purposes of sections 76-901 to 76-908, value means (1) in the case of any deed, not a gift, the amount of the full actual consideration thereof, paid or to be paid, including the amount of any lien or liens assumed, and (2) in the case of a gift or any deed with nominal consideration or without stated consideration, the current market value of the property transferred. Such tax shall be evidenced by stamps to be attached to the deed. All deeds purporting to transfer legal title or beneficial interest shall be presumed taxable unless it clearly appears on the face of the deed or sufficient documentary proof is presented to the register of deeds that the instrument is exempt under section 76-902. (Emphasis added.)

To ensure a uniform method for determining “nominal consideration” in those transactions when real property is transferred for less than the current market value of the property, “nominal consideration” is deemed to be anything less than 20 percent (20%) of the assessed value of the property when the full title to the property is transferred. The Form 521 provides the ability to state the current market value of the real estate when it is transferred for nominal consideration (See, Line 14 of the Form 521).

If a current market value is indicated on the Form 521, the Register of Deeds may use this value to calculate and collect documentary stamp tax. If the current market value is not indicated on the Form 521, the Register of Deeds shall use the assessed value, as reflected in the records of the County Assessor as of the date the deed is offered for recording, to calculate and collect documentary stamp tax. If the property is agricultural or horticultural land, the assessed value shall be adjusted by a factor of 1.33. If the assessed value is agricultural or horticultural land with the special valuation, then the special value shall be adjusted to actual value.

In the event a Register of Deeds has cause to question the current market value indicated on the Form 521, the assessed value as reflected in the records of the County Assessor as of the date the deed is offered for recording may be used to calculate and collect documentary stamp tax.

Conclusion. A transfer evidenced by a deed presented for recording with the Register of Deeds that contains nominal consideration, or is without stated consideration, shall be taxed based upon the current market value of the real property being transferred. If the current market value is not stated on the Form 521, the transaction shall be taxed, for documentary stamp tax purposes, based upon the assessed value as reflected in the records of the County Assessor.

APPROVED:

/s

Douglas A. Ewald

Tax Commissioner

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